HOWARD J. HUNT
HOWARD M. HUNT

IBLA 83-715 Decided May 14, 1984

Appeal from decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring mining claims AA 32624 through AA 32642 null and void ab initio.

Affirmed.

1. Administrative Procedure: Burden of Proof--Appeals-- Rules of Practice: Appeals: Burden of Proof

   When a party appeals a BLM decision, it is the obligation of the appellant to show that the determination is erroneous. Unless a statement of reasons shows adequate reasons for appeal and the allegations are supported with evidence showing error, the appeal cannot be afforded favorable consideration.

2. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

   Mining claims located on lands that are withdrawn from location are null and void ab initio.

APPEARANCES: Howard J. Hunt and Howard M. Hunt, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Howard J. Hunt and Howard M. Hunt appeal from a May 11, 1983, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring mining claims AA 32624 through AA 32642 null and void ab initio.

The notices of location for the 19 lode mining claims in question were filed with BLM on October 16, 1979. The notices for mining claims AA 32624 through AA 32631, designated Hunt #6 through #13, state that they were each located on July 11, 1972, and the notices for AA 32632 through AA 32641, designated Bloom Creek #1 through #10, state that they were located on July 7, 1973. These 18 claims are situated in T. 6 S., R. 9 E., Copper River meridian. Claim AA 32642, HUCARCO, was located on August 19, 1972, according to the location notice, on land in T. 9 S., R. 11 E., Copper River meridian.

Prior to these location dates, the lands upon which the claims were located were withdrawn "from all forms of appropriation under the public land laws * * * and from location and entry under the mining laws," by Public Land Order Nos. 5178 and 5179. 37 FR 5579 (Mar. 16, 1972). BLM relied on that fact in its decision when it explained that the lands were not open to mineral entry at the time of the respective locations and, therefore, the claims are null and void.

Appellants do not dispute that these claims are situated on lands which have been withdrawn from mineral entry. Instead, they have submitted the following statement of reasons for their appeal:

> We have spent considerable time and money prospecting and researching these areas since 1969 and were well established before the coming of D-2. The late Jack O'Neill and a business partner had a grub stake interest in both of these areas going back to 1927 and he turned all those geophysical records over to me. The claims are an expansion of other claims staked in 1969 after a discovery by Geo Chem Traverse.

[1] When a party appeals a BLM decision, it is the obligation of the appellant to show that the determination is erroneous. Unless a statement of reasons shows adequate reasons for appeal and the allegations are supported with evidence showing error, the appeal cannot be afforded favorable consideration. United States v. Connor, 72 IBLA 254 (1983); Rocky Mountain Natural Gas Co., 55 IBLA 3 (1981). Appellants appear to assert a right to these claims acquired from former claimants, but they have neither identified the actual locations made by their alleged predecessors nor provided evidence of their chain of title thereto. The record before us contains no evidence of preexisting claims with which appellants can support their present locations. However, assuming that there were indeed valid, preexisting locations, the status of appellants' claims would depend upon their classification as either a relocation or an amended location.

In Ronald R. Graham, 77 IBLA 174, 178 (1983), the Board discussed the distinction as follows:

> In R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), we distinguished between a relocation of a prior claim, which is adverse to that claim, and an amended location of that claim, which is made in furtherance of the prior claim. In the latter case, an amended location relates back to the date of the original location in the absence of adverse intervening rights. It would, however, predate any intervening segregation of the land. R. J. Wall, 68 IBLA 122 (1982). However, in the former case, a relocation does not relate back.
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> The doctrine of relation back will only be invoked in the case of an amended location where the locator can establish a chain of title leading to him. As we said in Tibbetts v. BLM, 62 IBLA 124, 130 (1982): "Intrinsic to the right to amend a claim is the prerequisite that the amender have present title

> to the claim, for if such title is lacking, an individual is not claiming through a prior location, but rather is initiating a claim of right adverse to the original location." In such circumstances, the amended location will be treated as a relocation.

Appellants have not presented evidence of a chain of title leading to them. None of the notices of location filed by appellants with BLM describe a relationship to other claims. If prior claims did exist, we must conclude, in the absence of evidence of transfer of the claims, that appellants' mining claims may only be treated as relocations. Ronald R. Graham, supra at 179. A relocator has no rights by relation back to the date and priority of the previous location. Henry J. Hudspeth, 78 IBLA 235 (1984).

[2] It is well established that a mining claim located on lands that are withdrawn from location is null and void ab initio, i.e., without legal effect from the beginning. Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom., Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970). Appellants' notices of location for their claims all declare location dates subsequent to the date of the withdrawals; therefore, BLM properly found that each was null and void ab initio. Appellants have failed to present arguments or evidence to the contrary.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Franklin D. Arness
Administrative Judge